

<sup>1/</sup> SI03, Inc. was substituted for Syntrax Innovations, Inc. as the real party in interest, per order of the Court on August 19, 2009.

www.bodybuilding.com (the “Website”), libelous statements about Plaintiffs and nutraceutical products manufactured by Plaintiffs. (Doc. # 41, Exh. 1, ¶¶ 80-87).

3. Based solely on three purported postings by a representative of Gaspari, Plaintiffs bring the following six causes of action against Gaspari: (i) violation of the Lanham Act, 15 U.S.C. § 1125(a); (ii) tortious interference with business expectancy or prospective business relationships; (iii) injurious falsehood; (iv) defamation; (v) libel; and (vi) civil conspiracy.

4. Gaspari is filing herewith a Memorandum of Law in Support of its Motion to Dismiss Plaintiffs’ Second Amended Complaint. The Memorandum of Law is incorporated by reference as if set forth fully herein. For the following reasons and as more fully set forth in Gaspari’s Memorandum of Law, Plaintiffs’ Complaint contains the following deficiencies such that it should be dismissed as against Gaspari:

a. This Court does not have personal jurisdiction over Gaspari. Therefore, Plaintiffs’ Complaint as against Gaspari should be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(2).

b. Plaintiffs failed to deliver a copy of the summons and Petition to an officer, a managing or general agent, person having charge of any office, registered agent, or any other agent authorized by appointment or by law to receive service of process on behalf of Gaspari as required under Federal rules and Missouri statutes. Therefore, because Plaintiffs have failed to properly effectuate service on Gaspari, Plaintiffs’ Complaint as against Gaspari should be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(5).

c. Count VI of Plaintiffs’ Complaint fails to state a cause of action for civil conspiracy because Plaintiffs have not alleged that there was a “meeting of the minds” among

the defendants or any facts to support a finding that there had been a “meeting of the minds.”  
Therefore, Count VI of Plaintiffs’ Complaint should be dismissed pursuant to Rule 12(b)(6).

WHEREFORE, for the reasons stated in this Motion and in Gaspari’s Memorandum of Law in Support thereof, defendant Gaspari Nutrition, Inc. respectfully requests that this Court dismiss Plaintiffs’ Second Amended Complaint as against Gaspari with prejudice.

Respectfully Submitted,

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## **CERTIFICATE OF SERVICE**

I hereby certify that on August 24, 2009, the foregoing was filed electronically with the Clerk of Court to be served upon the following by operation of the Court's electronic filing system and by first-class U.S. mail:

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